



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 21, 1995

Mr. Kenneth C. Dippel
Cowles & Thompson
901 Main Street, Suite 4000
Dallas, Texas 76202

OR95-1280

Dear Mr. Dippel:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36548.

The Town of Addison (the "city"), which you represent, has received a request for information relating to an applicant's pre-employment background check conducted by the city. You have released most of the requested information, but you have submitted several documents for this office to review and claim that sections 552.101, 552.108 and 552.111 of the Government Code except the information from required public disclosure.

You have marked certain information in Exhibit C that you contend may be withheld under the informer's privilege aspect of section 552.101. The informer's privilege is in reality the government's privilege to protect the identities of individuals who furnish information regarding violations of the law to officers charged with enforcing the law. Open Records Decision Nos. 549 (1990) at 4-5, 515 (1988) at 2. The informer's privilege serves to encourage the flow of information to the government by protecting the identity of the informer. *Id.* The basis for the informer's privilege is to protect informers from the fear of retaliation and thus encourage them to cooperate with law enforcement efforts. *Id.* Although the privilege ordinarily applies to the efforts of law enforcement agencies, it can apply to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 285 (1981) at 1; *see also* Attorney General Opinion MW-575 (1982); Open Records Decision No. 515 (1988). However, once the identity of an informer is disclosed to those who would have cause to resent the communication, the privilege is no longer applicable. Open Records Decision No. 202 (1978).

We have examined the documents for which you claim the informer's privilege. The documents indicate that several people furnished information to a city employee regarding alleged violations of the law by the applicant. Although the behavior complained of could be considered criminal in nature, such a violation of the law is not enforceable by the city. Open Records Decision No. 515 (1988) at 5. The informer's privilege applies to communications made to administrative officers who have a duty to enforce specific laws, and not to administrative officials in general. *Id.* In this case, the city obtained the information for employment purposes. However, the city itself cannot criminally prosecute the applicant for his actions. Moreover, you do not contend that the city intends to refer the matter to a law enforcement agency for criminal prosecution. We therefore conclude that the requested information is not excepted from disclosure by the informer's privilege component of section 552.101.

You next claim that the records are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(b) provide:

An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].

Generally, when the law enforcement exception is claimed for internal records of a law enforcement agency, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how release would unduly interfere with law enforcement. Open Records Decision No. 531 (1989) at 2 (citing *Ex Parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). Whether information falls within section 552.108 must be determined on a case-by-case basis. Open Records Decision Nos. 434 (1986) at 2, 287 (1981) at 2.

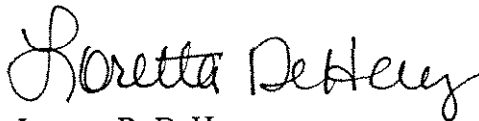
You claim section 552.108 because the information concerns an application for employment as a police officer. Generally, a police officer's law-enforcement background and previous experience and employment are not excepted from disclosure by section 552.108. Open Records Decision Nos. 562 (1990) at 10, 329 (1982) at 1. Moreover, you do not explain, nor is it apparent from the documents, how release of the records will unduly interfere with law enforcement. Therefore, you may not withhold the requested records under section 552.108 of the Government Code.

Lastly, you claim that section 552.111 excepts the records from required public disclosure. Section 552.111 excepts an "interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Section 552.111 excepts from disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Open Records Decision No. 615 (1993). An agency's policymaking functions, however, do not encompass internal administrative

or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* at 5-6. The requested information relates to an internal administrative and personnel matter, that is, the pre-employment background check of an applicant for police officer. Accordingly, we conclude that section 552.111 of the Government Code does not except the requested information from required public disclosure. The city must therefore promptly release the requested information in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Ref.: ID# 36548

Enclosures: Submitted documents

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(w/o enclosures)